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IN THE SUPREME COURT OF THE

UNITED STATES

12

October Term, 1977

NO. 76-1523

DAVID B. SWOAP, Director of the State Department of Benefit Payments, Petitioner,

vs.

MARGUARITA GARCIA and PALMIDA CASTANON, Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

NO. 76-1523

DAVID B. SWOAP, Director of the State Department of Benefit Payments, Petitioner,

vs.

MARGUARITA GARCIA and PALMIDA CASTANON, Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

This Brief in Opposition to the Petition for a Writ of Certiorari to the Supreme Court of the State of California is filed on behalf of Marguarita Garcia, Palmida Castanon and the class they represent.

OPINION BELOW

The opinion of the Court of Appeal is reported at 63 Cal. App. 3d 903, 134 Cal. Rptr. 137 (1976).

STATEMENT OF THE CASE

Respondents Garcia and Castanon filed suit in the Los Angeles County Superior Court seeking declaratory relief and to enjoin Petitioners' use of the Prior Month Budgeting system (PMB)[1/] to compute the amount of the grant for Aid to Families with Dependent Children (AFDC)[2/]. The PMB system operates by calculating the AFDC grant on the basis of net nonexempt income received two months prior to actual payment[3/].

To illustrate, Mrs. Garcia was receiving AFDC in the amount of $355 per month. This was the sole income for Mrs. Garcia and her four children until June 1974 when her husband began to give her $200 per month in child support. She promptly reported the payments to her caseworker and spent the money on past due bills. In August, her monthly AFDC grant was reduced to $155 to reflect the $200 child support payment made in June. However, her husband had ceased child support payments after his July payment. Thus, Mrs. Garcia's sole income for herself and four children in June and July was $155 from reduced AFDC grants.

Mrs. Castanon was receiving $336 in AFDC in July, 1974 because her husband was unemployed except for sporadic work which in July amounted to about $250 in nonexempt income. This income was promptly reported. Mr. Castanon used the $250 for his father's funeral and personal needs. In August he left the family and did not return. In September, Mrs. Castanon and her child received an AFDC grant of $86 as their sole income.

Prior to PMB the concurrent method of budgeting was

1/ Eligibility and Assistance Standards (EAS) Manual Section 44-315.6.

2/ 42 U.S.C. section 600 et seq.

3/ Garcia v. Swoap, 63 Cal. App. 3d 903, 906, 134 Cal. Rptr. 137, 139 (1976).

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used in which the grant was calculated on the basis of an estimate of nonexempt income from the month immediately preceding the payment. Corrections for fluctuating income were made on the second payment in the month to the extent possible[4/]. To the extent it was not possible to correct for fluctuations in the same month, an overpayment or underpayment was assessed.

To illustrate, assume the concurrent system had been used to compute Respondents' grants. When Mrs. Garcia received her support payment in June she promptly reported it to her caseworker. It was too late to reflect the payment in the second July payment; therefore, Mrs. Garcia would have received a grant of $355 and a $200 overpayment would have been assessed. The August grant would then be estimated on the basis of July and Mrs. Garcia would have received a grant of $155 and $200 in support for a total of $355. In August, when her support payment was not made, her second payment would be increased to assure her a grant of $355[5/].

In the same manner, to the maximum extent possible, Mr. Castanon's earnings in July would have been adjusted in the second July payment. If that was not possible, an overpayment or underpayment would be assessed. When Mr. Castanon left the home in August, an underpayment would be assessed and Mrs. Castanon would have received an immediate check in August[6/]. PMB was

4/ California law requires grants be paid on the 1st and 15th of each month. See: Welfare and Institutions Code Section 11456; Labor Code Section 204. All future references to California statutes are to Welfare and Institutions Code.

5/ If the caseworker had waited until the end of the month to be sure Mrs. Garcia did not receive the support payments, an underpayment of $200 would have been assessed in September.

6/ Had Mr. Castanon left earlier in the month, the second payment would have been raised to insure Mrs. Castanon and her child the full dollar amount to which she was entitled.

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specifically implemented to avoid these overpayment and underpayment situations as Petitioner admits[7/].

Respondents contended in the court of appeal that PMB violated both state and federal law. Specifically, they contended that the system was contrary to Welfare and Institutions Code Section 11450 and Welfare and Institutions Code Section 11004 and 45 C.F.R. §233.20(a)(3)(ii)(D)[8/].

The California Court of Appeal, Second District, reversed. The California Supreme Court denied a hearing in the case, and Petitioner then filed his Petition for Writ of Certiorari in this Court.

REASONS FOR DENYING THE PETITION

There are independent and adequate state grounds on which the judgment rests, and the decision does not present a substantial federal question not previously determined by the Court.

A. THERE ARE INDEPENDENT AND ADEQUATE STATE GROUNDS FOR THE JUDGMENT

It is well established that this Court will not review a judgment of a state court if that judgment rests on independent and adequate state grounds[9/]. This rule has been interpreted as "...not a mere technical rule nor a rule of... [the Court's] convenience."[10/] "It is found in the partition of power between state and federal judicial systems and in the limitations of ...[this court's] jurisdiction.[11/] The California Court of

7/ See: Petition for Writ of Certiorari, p. 5-6.

8/ Garcia v. Swoap, supra, 63 Cal. App. 3d at 908, 134 Cal. Rptr. at 140.

9/ Fox Film Corp v. Muller, 296 U.S. 207 (1935); Minnesota v. National Tea Co., 309 U.S. 551 (1940); Parker v. North Carolina, 397 U.S. 790 (1970).

10/ Minnesota v. National Tea Co., supra, at 557.

11/ Herb. v. Pitcairn, 324 U.S. 117, 125 (1945)

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Appeal held that the PMB system violated both state and federal law. Where both state and federal grounds were urged in the state court, it must appeal on the record, that any federal ground presented to the state court was the sole basis for the decision or that federal law compelled the decision, and it is incumbent upon Petitioner to establish the jurisdiction of the Court.[12/]

1. CALIFORNIA'S OVERPAYMENT STATUTE, WELFARE AND INSTITUTIONS CODE SECTION 11004, PROVIDED AN INDEPENDENT AND ADEQUATE STATE GROUND.

States which choose to become part of the AFDC program and use matching federal funds must conform to the requirements of the Social Security Act and the federal regulations promulgated by HEW. The states can adopt plans which are more liberal than the federal scheme but they may not be more restrictive.[13/] To the extent that a state does adopt more liberal standards, it becomes a matter of state, not federal, law.

The requirement that states recoup overpayments is not mandatory under federal law.[14/] When California elected to collect overpayments, federal regulations provided for certain safeguards for recipients.[15/] If California's overpayment collection statutes do not allow as great a reduction of grants as federal regulations do, then California's overpayment scheme is solely a matter of state law. If Petitioner's regulations violate that scheme,

12/ Department of Mental Hygiene of California v. Kirchner, 380 U.S. 194 (1965).
13/ King v. Smith, 392 U.S. 309 (1968), and see note 39.
14/ 45 C.F.R. §233.20(a)(12)(i)(A) provides that states may recoup overpayments. See also: Webb v. Swoap, 40 Cal. App. 3d 191, 114 Cal. Rptr. 897, (1974); Oliva v. Swoap, 59 Cal. App. 3d 130, 130 Cal. Rptr. 411 (1976)
15/ 45 C.F.R. §233.20(a)(12)(i)(C)(4)(f).

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the violation of state law provides an independent and adequate state ground, as this Court does not sit to determine matters of state law.[16/]

The California scheme of overpayment recoupment is substantially different from the federally required safeguards. Under federal regulations a state can only recoup overpayments if income and resources are currently available in the amount of the reduction.[17/] However, if a willful withholding of information by a recipient occurs, the state may reduce the overpayment irrespective of current income and resources,[18/] but the reduction can not, on a case-by-case determination, cause undue hardship.[19/]

Under the California scheme, the Petitioner can reduce the grant only to the extent current income and resources are available. But even if information is withheld willfully, Petitioner can reduce the grant only to the extent that there are resources and income available to meet the current needs of the child.[20/] The

16/ Dixon v. Duffy, 344 U.S. 143 (1952)
17/ 45 C.F.R. §233.20(a)(12)(i)(A)(1)
18/ 45 C.F.R. §233.20(a)(12)(i)(A)(2)
19/ 45 C.F.R. §233.20(a)(12)(i)(C)(4)(f)
20/ Section 11004(e) provides:
"(e) Current grants may be reduced because of prior overpayments only if the recipient has income or resources available in the amount by which the county proposes to reduce payment except; that where there is evidence which clearly establishes that a recipient willfully withheld information about his income or resources, such income or resources may be considered in the determination of need to reduce the amount of the grant in current or future periods. Prior to effecting any reduction of current grants to recover prior overpayments, the recipient shall be advised of the proposed reduction and of his entitlement to a hearing on the propriety of the reduction. In no event shall the grant to a needy child be reduced unless the parents or other responsible persons have sufficient available resources or income to meet the current needs of the needy child according to the department standard during the period of reduction."

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current needs of the children are called the Basic Standard of Adequate Care (BSAC) and are set forth in the statute subject to cost of living revision by Petitioner.[21] The BSAC is a larger amount than the Maximum Aid Payment (MAP) which is the amount of the grant payment.[22] Therefore, the amount of any reduction in the grant level (MAP) as required by federal regulation is necessarily less than the "current needs of the child." (BSAC).

Under section 11004(e), when no other income or resource is currently available, the maximum overpayment collectable from Respondent, even if she had willfully withheld information, would be $10 per month; the difference between the BSAC for her children, $389, and the MAP for her family, $399.

Had Respondent Castanon willfully failed to report her husband's income, the maximum collectable from her in the absence of other currently available income or resources would have been $82 per month; $237, her family's MAP, less $155, her child's BSAC.[23] Under federal law the state could reduce the grant payment regardless of available income or resources if the reduction did not cause "undue hardship."[24]

Respondents' grants were reduced below the level of the current needs of their children (BSAC) by PMB, even though they had no currently available income or resources to meet those needs, and in spite of the fact that they did not willfully withhold information. This being so, the Court of Appeals held:

21/ Section 11452; EAS Manual §§42-303; 44-212.2. The BSAC for Mrs. Garcia and her children at the time of appeal was $449.
22/ Section 11450; EAS Manual §44-315.411. The MAP for Mrs. Garcia and her children at the time of the appeal was $399.
23/ These examples are based on MAP and BSAC at the time of appeal.
24/ 45 C.F.R. 233.20(a)(12)(i)(C)(4)(f)

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"In this respect, PMB also avoids the specific recoupment limitations set forth in Welfare and Institutions Code section 11004,....Subdivision (e) of section 11004 is clearly worded to protect the children in these situations....However, as PMB is presently applied, a prior 'overpayment' occurs under these recoupment provisions when income is received in a particular month but is not reflected in the assistance grant for that month. (See Oliva v. Swoap, 59 Cal. App. 3d 130, 137, 130 Cal. Rptr. 411.) In the guise of 'retrospectively applied assistance payments,' PMB provides for the same sort of correction for 'overpayment' in instances of sporadic family income, but without the concomitant protective feature which assures that the child's current needs will not go wanting."[25]

This is exactly the situation where an independent and adequate state ground was meant to preclude review. As stated in Department of Mental Hygiene of California v. Kirchner:[26]

"This Court is always wary of assuming jurisdiction of a case from a state court unless it is plain that a federal question is necessarily pre-

25/ Garcia v. Swoap, supra, 63 Cal. App. 3d at 911-912, 134 Cal. Rptr. at 142.
26/ 380 U.S. 194, 197 (1964)

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sented, and the party seeking review here must show that we have jurisdiction of the case. Were we to assume that the federal question was the basis for the decision below, it is clear that the California Supreme Court, either on remand or in another case presenting the same issues, could inform us that its opinion was in fact based, at least in part, on the California [law], thus leaving the result untouched by whatever conclusions this Court might have reached on the merits of the federal question."[27/] (notes omitted)

2. THE CALIFORNIA PAYMENT STATUTE PROVIDED AN INDEPENDENT AND ADEQUATE STATE GROUND

The California statute provides for "...each needy family...[to] be paid...an amount of aid each month which when added to his income...is equal to the sums...[provided by the statute].[28/] The sum referred to is the amount of the grant payment plus net nonexempt income. Clearly, this phrase can be interpreted to preclude PMB regardless of the federal law on the subject.[29/]

The California Court of Appeal did not specifically rely on the state statute. However, the point was briefed and argued before the court.[30/] State courts do not sharply separate an

27/ Id.
28/ Section 11450(a).
29/ See: 42 U.S.C. 602(a)(7); 45 C.F.R. 233.20(a)(3)(ii); NWRO v. Mathews, 533 F. 2d 637 (D.C. Cir. 1976), and Respondents' Brief in Opposition to Petition for Writ of Certiorari, infra.
30/ Garcia v. Swoap, supra, 63 Cal. App. 3d at 908, 134 Cal. Rptr. at 140.

adjudication of both state and federal questions when reaching a judgment in a case.[31/] Nonetheless, this Court has, in the past, declined to take such cases.[32/] It is Respondents' contention that the state and federal grounds are "...not so interwoven that [the Court is] unable to conclude that the judgment rests upon an independent interpretation of state law."[33/]

Even if the Court concludes that there are reasonable grounds to believe that the judgment may rest solely on the federal question, there is authority to deny a review:

> "But what to do with cases in which the record is ambiguous but presents reasonable grounds to believe that the judgment may rest on decision of a federal question has long vexed the Court. In many cases the answer has been a strict adherence to the rule that it must affirmatively appear that the federal question was decided and that its decision was essential to disposition of the case; and that where it is not clear whether the judgment rests on a federal ground or an adequate state one, this Court will not review. (Citations omitted)
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> "In other cases where justice seemed to require it, for example because of

31/ See e.g.: Herb v. Pitcairn, 324 U.S. 117 (1945).
32/ Klinger v. Missouri, 13 Wall. 257 (1872); De Saussure v. Gaillard, 127 U.S. 216 (1888); Johnson v. Risk, 137 U.S. 300 (1890); Wood Mowing Machine Co. v. Skinner, 139 U.S. 293 (1891); Adams v. Russell, 229 U.S. 353 (1913); Lynch v. New York, 293 U.S. 52 (1934).
33/ Jankovich v. Indiana Toll Road Commission, 379 U.S. 487, 492 (1965).

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> supervening events, the Court has said that to set aside the judgment and remand the case to the state court for further consideration is not to review, in any proper sense of the term, the decision of the state court."[34]

In view of the wording of Section 11450(a) and Section 11004(e), justice does not require this Court to set aside the judgment and remand the case. The references to state statutes as argued above are sufficient to justify the denial of the Writ.

B. THE RULE THAT A STATE MAY CONSIDER ONLY INCOME AND RESOURCES ACTUALLY AVAILABLE IS NOT A NOVEL ONE.

The federal question presented concurrently to the state court is founded in the federal mandate that the states "shall, in determining need,...take into consideration any other income and resources" of recipients.[35] This mandates that only actual income currently available be considered.[36] The policy is long-standing,[37] during which time numerous amendments of Title IV of the Social Security Act have taken place. This Court has held that the policy clearly comports with the Act[38] and has struck down numerous state statutes or regulations violating the "actually and currently available standard" as violative of The Supremacy Clause of the United States Constitution.[39] Since the currently

34/ Herb v. Pitcairn, supra, 324 U.S. at 126.
35/ 42 U.S.C. 602(a)(7)
36/ 45 C.F.R. 233.20(a)(3)(ii)(C).
37/ The policy originated in HEW's Handbook of Public Assistance Administration §3131(5) (1940).
38/ King v. Smith, supra.
39/ Lewis v. Martin, 397 U.S. 552 (1970); Townsend v. Swank, 404 U.S. 282 (1971); Carleson v. Remillard, 406 U.S. 598 (1972); Gilliard v. Craig, 409 U.S. 807 (1972); Shea v. Vialpando, 416 U.S. 251 (1974); Van Lare v. Hurley, 421 U.S. 338 (1975); Philbrook v. Glodgett, 421 U.S. 707 (1975).

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available standard rests upon 42 U.S.C. 602(a)(7), overpayment regulations must also consider currently available income, at least where no withholding of information by the recipient occurred.[40] Therefore, the court below correctly followed a long line of federal decisions.

Petitioner alleges a low-level official of the Department of Health, Education and Welfare (HEW) had at one time approved his PMB scheme and argues that by holding his scheme invalid, an important function of HEW has been abrogated. This argument overlooks the fact that under our system of government, the final interpretation of the Constitution and statutes of the United States is with the judicial branch, not the executive. While the agency's interpretation may be entitled to great weight, the opinion of a low-level official is not. Even had HEW issued an opinion, the principal:

> "...applies only where the relevant statutory language is unclear or susceptible of differing interpretations. [citations omitted] In view of the literal requirements of §402(a)(7) [42 U.S.C. 602(a)(7)] which accord with the federal policy underlying its enactment, [the Court] need not look to agency practice...."[41]

Additionally HEW has not been totally consistent in applying federal standards itself. Cf: Shea v. Vialpando,[42] Hagans v. Lavine,[43] Letter from David Hurwitz dated March 16, 1977. Appendix A. HEW has on two occasions proposed federal PMB regulations and

40/ NWRO v. Mathews, supra; NWRO v. Weinberger, 377 F. Supp. 861 (D.C. D.C. 1974).
41/ Shea v. Vialpando, supra, 416 U.S. at 262, n. 11; See also Townsend v. Swank, supra, 404 U.S. at 286, n. 3.
42/ 416 U.S. 251 (1974)
43/ 415 U.S. 528, 533 n. 4 (1974).

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on both occasions the agency chose to withdraw its proposed regulations.

Petitioner further argues that allowing state courts to interpret federal statutes and the Constitution and invalidate Petitioner's or HEW's efforts at welfare reform, will somehow undermine the relation between the federal government and the states. This ignores the fact that state courts as well as federal ones are charged with enforcing the United States Constitution[44/] and are bound by it to strike down state regulations which are inconsistent with federal law.[45/] Petitioner's concern with welfare reform is commendable, but he must recognize that his ability to carry out change must be a limited one within the framework set out by the state legislature or Congress. Sweeping changes such as the one contemplated here are best left to legislatures which are directly responsible to the electorate. Petitioner has offered no reason why the question presented here in any way differs from King v. Smith and its progeny. Therefore, there is no novel question presented, and this Court should deny the Petition for Writ of Certiorari.

44/ See: Mr. Justice Rehnquist's dissent in Hagans v. Lavine, supra, 415 U.S. at 553.

45/ See note 34 supra.

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CONCLUSION

For the foregoing reasons, a Writ of Certiorari to the California Supreme Court should be denied.

DATED: September 8, 1977 Respectfully submitted,

Western Center on Law and Poverty, Inc.
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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MAR 16 1977

Mr. Kevin M. Aslanian
President
Welfare Recipients League, Inc.
1505 East Santa Clara Street
San Jose, California 95116

Dear Mr. Aslanian:

Secretary Califano has asked me to thank you for your letter of February 22 concerning administration of the Aid to Families with Dependent Children (AFDC) program in California.

We are aware of the recent difficulties which have arisen in the California welfare program regarding the conformity of California welfare plans with certain provisions of Federal law. Procedures have been instituted for correction of State plan provisions to comply with Federal law and regulations, and the California Appellate Court decision in Garcia v. Swoap (1976),63.C.A. 3d 903.

We are taking the liberty of forwarding your letter to Mr. Charles W. Goady, Regional Commissioner in the Department's San Francisco Regional Office at 50 Fulton Street, Federal Office Building, San Francisco, California 94102, with the request that he advise you on the current status of this issue.

We appreciate your bringing this matter to our attention.

Sincerely,

David S. Hurwitz

David S. Hurwitz
Acting Commissioner
Assistance Payments Administration

cc: Regional Commissioner, Region IX

Appendix A

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of the County aforesaid, I am over the age of eighteen years and not a party to the within action; my business address is: 3535 West Sixth Street, Los Angeles, California 90020. On September 8, 1977 I served the within MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND AFFIDAVITS IN SUPPORT THEREOF; BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA on Petitioners in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

EVELLE J. YOUNGER, Attorney General of
the State of California
N. EUGENE HILL, Assistant Attorney General
EDMUND E. WHITE, Deputy Attorney General
JEROLD A. PROD, Deputy Attorney General
555 Capitol Mall, Suite 350
Sacramento, California 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 8, 1977, at Los Angeles, California.

Carla Francine Testi

CARLA FRANCINE TESTI